IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 16TH JULY 2007 / 25TH ASHADHA 1929

WP(C).No. 26829 of 2006(R)

PETITIONER:

CYRIAC JOSEPH, AGED 39 YEARS,
S/O. JOSEPH, THEKKUMPERUMALIL HOUSE,
AMANAKARA P.O., RAMAPURAM,
KOTTAYAM DISTRICT.

BY ADV. SRI.C.C.THOMAS.

RESPONDENTS:
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1. **THE DEPUTY LABOUR COMMISSIONER,**
   O/O. THE DEPUTY LABOUR COMMISSIONER,
   KOTTAYAM.

2. **THE DISTRICT LABOUR OFFICER,**
   KOTTAYAM.

3. **V.N.PRABHAKARAN,**
   VATTAPPARAMBIL HOUSE, KONDATTU,
   CHAKKAMPUZHA P.O., KOTTAYAM DISTRICT.

BY GOVT. PLEADER SRI. M.R. SABU.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/07/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.26829/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE JUDGMENT DTD. 08/06/2006 IN W.P.(C). NO. 14195/2004 AND CONNECTED CASES PASSED BY THIS HONOURABLE COURT.

EXT.P.2: COPY OF THE NOTICE DTD. 14/08/2006 ISSUED BY THE R.1.

EXT.P.3: COPY OF THE LETTER DTD. 20/09/2006 SENT BY THE PETITIONER TO THE R.1.

EXT.P.4: COPY OF THE ORDER NIL DTD. IN S.A. NO. B.619/2000 PASSED BY THE R.1.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

S. SIRI JAGAN, J.

WP(C) NO. 26829 OF 2006 R

Dated this the 16th day of July, 2007

J U D G M E N T

The petitioner is a toddy shop licensee. His brother late Jose Joseph was conducting a toddy shop on his behalf. When proceedings were initiated for financial irregularities against two of the employees, the workers attacked the petitioner's brother and murdered him. Later, the third respondent filed an application for subsistence allowance under the Payment of Subsistence Allowance Act. The same has been allowed by Ext.P4 order. The petitioner challenges Ext.P4 order. The contention of the petitioner is that none of the contentions of the petitioner has been dealt with in Ext.P4 order. According to him, the third respondent was not actually suspended. In view of the criminal case pending, he did not report for work. There is a further contention that during the period in question, the toddy shop was not functioning at all. The petitioner also contends that the payment of subsistence allowance is not applicable to

toddy shops under the Abkari Act, since as per Sub rule 9 of Rule 7 of the erstwhile Kerala Abkari Shops (Disposal in Auction) Rules, 1974 which is applicable to the period in question, only Acts mentioned in clauses (a) to (j) alone are applicable to the employees of the toddy shops. Counsel for the petitioner points out that in O.P.Nos.8476, 9141, 9204 and 19187/2001 and W.P(C) No.14195/2004, this Court had quashed similar orders in respect of similarly situated employees and directed reconsideration of the matter and passing a proper order adverting to the contentions of the petitioners therein.

2. Although notice has been received by the third respondent, he has not turned up to contest the case. I have heard the learned counsel for the petitioner as also the learned Government Pleader.

3. In Ext.P4, I do not find any consideration of the contention of the petitioner as noted above. In the above circumstances, following Ext.P1 judgment, I quash Ext.P4 order and direct the first respondent to

reconsider the matter dealing with each and every contention of the petitioner.

The writ petition is disposed of as above.

Sd/-

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

W.P.(C) NO. OF 2001

J U D G M E N T

DATED:01-06-2007